

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS

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4 UNITED STATES OF AMERICA,
5 Plaintiff,

6 V. Criminal Action No. 04-10260-RCL

7 CARLOS HOWELL, February 13, 2006, 2:24 p.m.
8 Defendant. Boston, Massachusetts
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12 TRANSCRIPT OF SENTENCING OF CARLOS HOWELL
13 BEFORE THE HONORABLE REGINALD C. LINDSAY

14 UNITED STATES DISTRICT COURT
15 JOHN J. MOAKLEY U.S. COURTHOUSE
16 1 COURTHOUSE WAY
17 BOSTON, MA 02210
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22 DEBRA M. JOYCE, RMR, CRR
23 Official Court Reporter
24 John J. Moakley U.S. Courthouse
25 1 Courthouse Way, Room 5204
Boston, MA 02210
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1 APPEARANCES:

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P R O C E E D I N G S

(The following proceedings were held in open court before the Honorable Reginald C. Lindsay, United States District Judge, United States District Court, District of Massachusetts, at the John J. Moakley United States Courthouse, 1 Courthouse Way, Boston, Massachusetts, on February 13, 2006.

The defendant, Carlos Howell, is present with counsel. The Assistant United States Attorney is present.)

THE CLERK: Criminal action 04-10260, United States v. Carlos Howell.

Counsel, please state your name for the record.

MR. HEINRICH: Good afternoon, your Honor. Ted Heinrich for the government.

MR. UNDERHILL: Good afternoon, your Honor. Walter Underhill for the defendant, Carlos Howell.

THE COURT: Good afternoon. We're here this afternoon for the disposition of the matter of United States v. Carlos Howell, who pleaded guilty on June 6th of last year to distribution of cocaine base in violation of Title 21 United States Code section 841(a)(1).

Mr. Heinrich, have you reviewed the presentence report?

MR. HEINRICH: Yes, your Honor.

THE COURT: Mr. Underhill, have you had a chance to review the report yourself and review it with Mr. Howell?

1 MR. UNDERHILL: I have, your Honor, reviewed it
2 several times and Mr. Howell has had a copy of it. We've gone
3 over it on several occasions. Objections have been filed. And
4 with the exception of one general characterization that I would
5 address during my presentation to the Court, other than the
6 objections, we don't have any disagreement with the presentence
7 report.

8 THE COURT: All right. Well, I am going to go
9 through the parts of the report, and at the point at which you
10 have objections, please state what they are.

11 MR. UNDERHILL: Thank you, your Honor.

12 THE COURT: All right. I start with the offense
13 level calculation. The guidelines have been determined in this
14 case by reference to the manual issued on November 1, 2004. On
15 the basis of that manual, and because the defendant is being
16 held accountable for 27.4 grams of cocaine base, the base
17 offense level is pegged at 28. There's been a three-level
18 adjustment for acceptance of responsibility, and the total
19 offense level before the application of career offender
20 provisions is level 25. The probation officer has determined,
21 however, that Mr. Howell qualifies for the career offender
22 enhancement, which brings his unadjusted offense level to level
23 34. And with three levels of acceptance of responsibility, he
24 is placed in level 31.

25 I think you have an objection to the career

1 offender.

2 MR. UNDERHILL: That's correct, your Honor. I
3 stated two objections to the career offender.

4 THE COURT: All right. Before I take your
5 objections, let me go to the Criminal History Category, then
6 I'll hear you with respect to both.

7 (Pause.)

8 THE COURT: All right. This defendant is in
9 Criminal History Category VI. This is solely because of the
10 career offender?

11 PROBATION OFFICER: That's right, your Honor.
12 Otherwise, he would be in Category V.

13 THE COURT: Okay. He has total criminal history
14 score of 11, but because of the career offender provisions, he
15 is in Criminal History Category VI.

16 Mr. Underhill, you have objections?

17 MR. UNDERHILL: Yes, your Honor. I -- if it please
18 the Court. I had filed two objections when the report was
19 first issued, and they were based upon the quality of the
20 evidence of those convictions. And I don't have anything to
21 add to the arguments I made in the -- in my objections to the
22 presentence report. I will say, however, as to the objection
23 to the Dorchester District Court, possession with intention to
24 distribute --

25 THE COURT: Well, is this the --

1 MR. UNDERHILL: Do you want me to do it by number?

2 THE COURT: That's not the one in paragraph 42, is
3 it?

4 MR. UNDERHILL: One moment, your Honor.

5 THE COURT: Because that's an A and B.

6 MR. UNDERHILL: No. It's the paragraph 47 and --

7 THE COURT: Forty-seven. Okay.

8 MR. UNDERHILL: I just want -- I'm actually
9 starting backwards, your Honor.

10 I have had an opportunity to review -- one of the
11 problems when I filed this objection was both probation and I
12 were having difficulty getting docket sheets from the various
13 courts. The Dorchester District Court docket sheet on that
14 particular charge has been obtained by probation. I reviewed
15 it. It was the defendant's understanding and position that he
16 had pled guilty to mere possession, not possession with intent
17 to distribute. The docket sheet, however, reflects that he was
18 originally charged with possession with intent to distribute
19 and -- in a school zone.

20 THE COURT: It's a school zone that's on the record
21 I have.

22 MR. UNDERHILL: Well, no, the school zone was
23 dismissed.

24 THE COURT: Oh, yes, I guess that's right. Yes.

25 MR. UNDERHILL: But what Mr. Howell understood and

1 still believes today is that it was his understanding that the
2 possession with intent to distribute was actually reduced to
3 mere possession. However, that is not reflected in the docket
4 sheet, and I must, you know, state to the Court without giving
5 up the objection -- and I'd ask the Court to rule on the
6 objection -- that it seems that the docket sheet rules. And he
7 may have been under a misapprehension, he may have been
8 misinformed.

9 THE COURT: Did you look for the tape that
10 reflects --

11 MR. UNDERHILL: The tape wouldn't have been -- I
12 didn't, your Honor, because I believe the tapes -- my
13 understanding of the way the tapes work is that after two
14 years, the tapes are gone.

15 THE COURT: Okay.

16 MR. UNDERHILL: There's no tapes. I mean, I can't
17 say that I made a request and it's been denied, but I've done
18 enough work in the district courts --

19 THE COURT: To know that after two years you don't
20 have a tape.

21 MR. UNDERHILL: You don't get the tape.

22 So that is -- still, that is his position. Again,
23 the docket sheet does not reflect that.

24 I've been in Dorchester District Court enough over
25 the course of my career -- I'm not there on a regular basis --

1 but it's an extremely busy, busy court. Things are done in a
2 very, very hasty and sometimes not as thorough a manner as one
3 might expect in other venues.

4 THE COURT: I should tell you before you go on my
5 cousin works in the clerk's office over there.

6 MR. UNDERHILL: I'll tell you, I don't know who
7 your cousin is, but the clerk's office has always been very
8 nice to me. It wouldn't have been the clerk's fault.

9 THE COURT: Okay.

10 MR. UNDERHILL: It wouldn't have been anybody's
11 fault. What I'm suggesting is with the rapidity -- and I have
12 also been responsible -- with the rapidity of what happens at a
13 very, very high-volume court, there may have been a
14 misunderstanding along the way.

15 The facts of that case, according to the defendant,
16 and I don't believe -- and Ms. Foster, if I could -- you don't
17 have the police report in the case, do you?

18 PROBATION OFFICER: No, I don't.

19 MR. UNDERHILL: Okay. The defendant would ask me
20 to represent to the Court that he has, and he's told probation
21 this, he has a marijuana -- he's a marijuana user, he's an
22 alcoholic and heavy marijuana user.

23 In the City of Boston, it's always been my
24 understanding -- I don't think there's any one place you can
25 stand that's not within a thousand feet of a school zone,

1 especially in that area. So he was in a playground with his
2 son, and he had ten bags of marijuana, which he -- which he
3 maintains was for his personal use. He was arrested, he was
4 with his son; it wasn't a sale to another person, it wasn't an
5 undercover sale.

6 Mr. Howell may be many things based upon a thorough
7 review of his criminal record, but I suggest overall he's not a
8 drug dealer.

9 But sticking with the objection --

10 THE COURT: Well, before you go on to the
11 objection, aren't there -- even if we resolve this objection,
12 aren't there enough predicates for the career offender anyway?

13 PROBATION OFFICER: He has just two predicates,
14 your Honor.

15 THE COURT: So this is one of the two.

16 PROBATION OFFICER: Yes.

17 MR. UNDERHILL: Believe it or not.

18 THE COURT: Sorry.

19 MR. UNDERHILL: In going through, it is -- now, the
20 other objection --

21 THE COURT: Well, I interrupted you because you
22 said sticking with this objection --

23 MR. UNDERHILL: Well, I was getting back to the
24 technical aspects of the objection. I'm not going to withdraw
25 it. I'm going to ask you to rule on it. I've made my

1 representations. All I'm saying to you is in all good faith
2 and fairness, I must state that the docket sheet does not
3 reflect Mr. Howell's understanding, but he stands by what his
4 understanding was.

5 THE COURT: Okay.

6 MR. UNDERHILL: As to the other --

7 THE COURT: Which is the other, is that the other
8 one that's in --

9 MR. UNDERHILL: There are two --

10 THE COURT: Forty-two?

11 MR. UNDERHILL: It is 42. That's the assault and
12 battery.

13 THE COURT: Yes.

14 MR. UNDERHILL: Again, your Honor, I'm not going to
15 withdraw the objection. It may sound specious, but it's so
16 important that -- I've looked at the complaints. The
17 complaints out of Dorchester specifically state that what is
18 stated here by probation that Mr. Howell did assault and beat a
19 Keith Baker. The case was not disposed of in Dorchester
20 District Court. It was disposed of in the BMC. I'd ask you to
21 review those docket sheets again, and I'm not trying to be
22 facetious here. I'm not going to withdraw the objection.
23 There may be enough ambiguity with the way it was handled that
24 Shepard may apply in this particular case. I'm not going to
25 argue against myself on that.

1 THE COURT: Why would Shepard apply? Because the
2 docket sheet says A and B with a dangerous weapon.

3 MR. UNDERHILL: Right. Do you have the docket
4 sheets in front of you, your Honor?

5 THE COURT: The docket sheets, no.

6 MR. UNDERHILL: I think probation does. What
7 happens is -- that's correct. The docket sheets out of
8 Dorchester say that. The case was disposed of in the Boston
9 Municipal Court.

10 I guess my --

11 THE COURT: Well, how is this --

12 MR. UNDERHILL: -- far reaching point is that it is
13 not completely clear as to what it ultimately was disposed of
14 as in the BMC.

15 THE COURT: What do you know about the disposition
16 in the Boston Municipal Court?

17 PROBATION OFFICER: I know that it was originally
18 charged as A and B, a threat and A and BDW, and it was carried
19 over to the Boston Municipal Court as exactly those charges,
20 and it is reflected in the BMC docket.

21 THE COURT: Is there something in the BMC docket
22 that is not reflected here?

23 PROBATION OFFICER: No, your Honor.

24 MR. UNDERHILL: Again, I'd ask you to look at them,
25 your Honor.

1 THE COURT: Do you have them?

2 PROBATION OFFICER: I do.

3 MR. UNDERHILL: I think if Ms. Foster, if she would
4 point it out for me, that would sufficiently allow you to make
5 your decision.

6 (Discussion off the record.)

7 THE COURT: What is it you want me to look at this?

8 MR. UNDERHILL: Your Honor, I wanted you to look
9 at --

10 THE COURT: Let me just interrupt you. Because I
11 see on this docket sheet from Boston Municipal Court, what's
12 reflected in paragraph 42 of the PSR, assault and battery, and
13 assault and battery, assault by dangerous weapon. The same
14 thing is reflected.

15 So what is it you want me to know?

16 MR. UNDERHILL: I guess on the BMC docket sheets
17 themselves, they're generic, they're not as specific as the
18 docket sheets out of Dorchester.

19 THE COURT: Okay. But I see on the BMC docket
20 sheet --

21 MR. UNDERHILL: You'll see in the reference point.

22 THE COURT: I'm sorry.

23 MR. UNDERHILL: You're seeing the reference
24 numbers.

25 THE COURT: Tell me what you want me to see. I see

1 894359. And the offense listed is assault by dangerous weapon.

2 MR. UNDERHILL: Hm-hmm.

3 THE COURT: And what is it you want me to see?

4 MR. UNDERHILL: If it's assault -- in other words,
5 if it's just assault by dangerous weapon, my argument would be
6 that's a generic. That's generic.

7 THE COURT: Is it?

8 MR. UNDERHILL: If, in fact, you either incorporate
9 the Dorchester District Court complaints, it is not generic, it
10 is more specific.

11 THE COURT: Well, there's somewhere -- maybe this
12 is a police report and I should look at it, because I saw .38
13 caliber -- I'm looking -- I guess I'm looking at a complaint
14 that says something about a .38 caliber weapon. Am I wrong to
15 look at that? It has that same number, 894359.

16 MR. UNDERHILL: Is it a police report or is it --

17 THE COURT: Well, I'm looking at what looks like --
18 it's a complaint, it says.

19 MR. UNDERHILL: Is that the BMC complaint?

20 PROBATION OFFICER: It's a criminal complaint
21 originated in the Dorchester District Court, which the Boston
22 Municipal basis their charges on.

23 MR. UNDERHILL: That's --

24 THE COURT: Okay. I see. The point of the matter
25 is, it seems to me this case originated in Dorchester, somehow

1 got to the Boston Municipal Court -- maybe the whole thing is
2 in Boston Municipal Court --

3 MR. UNDERHILL: I'm sorry.

4 THE COURT: Isn't the whole thing called the Boston
5 Municipal?

6 MR. UNDERHILL: It's under the aegis of the Boston,
7 now your jury cases are in Dorchester.

8 THE COURT: But in any case, if I look at these two
9 documents, 894359, and to those of the BMC jury session, I
10 don't know whether that was in Dorchester or downtown --

11 MR. UNDERHILL: That would have been downtown.

12 THE COURT: In any case, it says assault by
13 dangerous weapon, the number is 894359. The number in
14 Dorchester was 894359, and in the complaint there is a
15 reference to a .38 caliber weapon. So it seems to me that if I
16 don't look -- if I look not -- if I look no further as -- if
17 I'm limited, as I am, by Shepard to looking at the charging
18 document, I see the weapon.

19 Okay. Your point is that maybe there's a
20 difference, but I see it -- I don't see the difference
21 you're -- I see what you're saying, but I don't see the
22 difference.

23 MR. UNDERHILL: Thank you, your Honor.

24 THE COURT: Okay. All right. Is there anything
25 else?

1 MR. UNDERHILL: No, your Honor, I think that's it
2 from me.

3 THE COURT: All right. I think I'm satisfied that
4 the two predicate offenses to which there have been objections
5 are appropriately counted, and I determine that Mr. Howell is a
6 career offender and that his offense level is 31 and his
7 Criminal History Category is VI.

8 Mr. Heinrich, you want to make a recommendation to
9 me?

10 MR. HEINRICH: Your Honor, generally speaking, the
11 government's recommendation is that the Court impose a sentence
12 within the applicable guideline range. Here that would be a
13 sentence of 188 months. I don't think that a sentence of
14 higher is necessary to achieve the purposes of sentencing.

15 THE COURT: Can you speak a little louder into that
16 microphone?

17 MR. HEINRICH: I can. The government recommends a
18 sentence of 188 months, the lower end of the guideline range
19 based on the facts and circumstances of the offense and the
20 defendant's criminal history.

21 The interesting thing -- I mean, if the Court --
22 well, if the career offender provision had not been applicable,
23 the guideline range would have been 100 to 125 months. The
24 interesting thing is that the non-career offender predicates
25 are somewhat more serious than the career offender predicates.

1 I mean in, '86 there was larceny from a person and
2 carrying a dangerous person. In 1987, assault and battery,
3 unarmed robbery. In 1989, possession of a firearm. Then '89
4 the assault and battery, which we discussed. 1990, possession
5 of a class D controlled substance. '91, a second possession of
6 a firearm. 1992, a third possession of a firearm. 1996, more
7 marijuana. 2000, the possession to distribute marijuana. And
8 then 2004, a disorderly conduct. And now this federal offense,
9 which is distribution of an ounce of crack cocaine.

10 If the Court were to consider an alternative
11 sentence, the government's recommendation would be that it look
12 at that non-career offender guideline from 100 to 125 months
13 and go to the top of that range, or 120 months, a ten-year
14 sentence, again, based on all the facts and circumstances
15 relating to the offense of conviction and the defendant's
16 progression in his criminal history.

17 THE COURT: Thank you, Mr. Heinrich.

18 MR. HEINRICH: Thank you, your Honor.

19 THE COURT: Mr. Underhill.

20 MR. UNDERHILL: Your Honor, on behalf of
21 Mr. Howell, I'm not going to reiterate everything that has been
22 stated in the presentence report. Ms. Foster did a very
23 thorough background on Mr. Howell. I was present during the
24 interview, and Mr. Howell has had a very, very difficult time
25 in his life. He's had a very, very difficult upbringing, as is

1 accurately reflected in the report. He's had a very limited
2 education, very difficult family life, father who died of
3 aids. And quite frankly, a complete lack of any role model
4 that would lead him in a direction that might have caused him
5 to pursue a life that did not have all of these violations and
6 this misconduct.

7 His record is what his record is. There's no doubt
8 about it. But what he's charged with in this case, and one of
9 the things that bothered me about this case that I really want
10 to get into, and I hope that I'm not missing the target here,
11 is the nature of the case.

12 Mr. Howell -- and I believe him when he says this:
13 He is not a drug dealer, okay? And I don't think he's a crack
14 dealer. And if you look at the facts of this case, as I
15 understand it, both from reading the discovery, listening to my
16 client, corroborating some of it from the discovery that I
17 received from the government, Mr. Howell was, and I would
18 suggest to the Court, targeted in this case to get to another
19 individual who's mentioned in the presentence report by the
20 name of Husie Joyner. Husie Joyner was a high-profile
21 individual in the community which Mr. Howell lived in that the
22 federal government, state government wanted to take off the
23 streets. They have since done that. But unfortunately for
24 Mr. Howell, not with his assistance to the United States
25 government.

1 Now, Mr. Howell, according to the presentence
2 report, has two children. One of the children has a mother by
3 the name of La Sonia Reynolds.

4 Now, in this particular case, the confidential
5 witness, the confidential informant, there was no -- it was not
6 some stranger that met up with Mr. Howell and wanted to get an
7 ounce of cocaine. It was a woman who was a friend of La Sonia
8 Reynolds, who, for all intents and purposes, was pretty much at
9 the time Mr. Howell's common-law wife; and actually, La Sonia
10 Reynolds transacted, unbeknownst to Mr. Howell, an ounce of
11 cocaine with this Cynthia Morissette slash Slaten; I think her
12 married name is Slaten.

13 That was unbeknownst to Mr. Howell. I became aware
14 of that after I became Mr. Howell's attorney. She never got
15 arrested. She never had charges brought against her.

16 Now, I think it was the effort of both Ms. Reynolds
17 and Ms. Morissette, if I may call her that, Morissette slash
18 Slaten, that wanted Mr. Howell to make a purchase or arrange a
19 purchase from Husie Joyner.

20 I listened to the tapes. The tapes are very, very
21 difficult, but she came to him and she said she was in trouble,
22 she needed help -- I'm not suggesting this is a good thing, to
23 help someone in trouble -- she needed to make money to hire a
24 lawyer in a criminal case that was being brought against her.
25 Mr. Howell's not a drug dealer; he did help her. He never made

1 the purchase or he never arranged the purchase from Husie
2 Joyner. It was a third person who never ended up identified,
3 and Mr. Howell is here to take his punishment as a
4 non-cooperating witness.

5 Mr. Joyner has a very, very bad reputation in the
6 community from my understanding, a dangerous person.
7 Mr. Howell did not want to put himself or his family into
8 danger. He's going to suffer the consequences for that because
9 there's no 5K1.

10 The presentence report -- and I just picked up on
11 it recently in the government's version -- says it was
12 discovered that Mr. Howell was a broker for Husie Joyner's
13 crack business. None of the discovery or none of the evidence
14 that I was provided corroborates that. I suggest to this Court
15 that what he was a victim of is a one-time deal only. I'm sure
16 he knew Husie Joyner, and I'm sure he knew his reputation, as
17 anyone would in the community. I think we all understand
18 that. But the fact of the matter is, with his criminal record,
19 I am sure that the government felt that they had sufficient
20 power to put him in a vice that would help their case. He
21 chose not to take that route. I'm not suggesting he should be
22 rewarded for that.

23 But on the other hand, your Honor, I ask this Court
24 to look at the 3553 -- the 3553 factors, section a. It
25 really -- the sentence of 188 months for Mr. Howell, I believe

1 in this case, is inappropriate. I'm not suggesting that he's a
2 newcomer to the criminal justice system, but I think that,
3 quite frankly, giving him a sentence to that extent essentially
4 shuts his life down.

5 I honestly believe, Judge, that in my discussions
6 with Mr. Howell, Mr. Howell felt and always felt that he was
7 entrapped in this case. And I honestly believe that had this
8 case gone to trial, I would have at least got the instruction.
9 I'm not suggesting I would have got the acquittal, but I firmly
10 believe, and I represent to this Court as an officer of this
11 court, that I firmly believe the evidence would have got me the
12 instruction.

13 That's a hurdle that one has to at least
14 demonstrate, because I lost one recently two weeks ago because
15 I didn't get the instruction.

16 I felt truly there was enough evidence to get that
17 instruction after the research of the law.

18 I would ask your Honor not to -- your Honor, not --
19 to make him a career offender in this case, to sentence him as
20 a career offender is wrong in totality of the circumstances.
21 And I would ask the Court to impose a sentence a little bit
22 below level 25 Category V, and I would ask the Court to go down
23 to a level 23 Category V and sentence him to between one -- 84
24 and 105 months. I think that's the appropriate sentence under
25 3553(a). I think it meets all the criteria of the statute and

1 it's a sentence that is not greater than necessary in order to
2 achieve all of the purposes of the statute. And that really is
3 where we're at with sentencing today. And I ask your Honor to
4 impose that sentence as I have just suggested.

5 THE COURT: All right. Thank you, Mr. Underhill.

6 Mr. Howell, is there anything you'd like to tell
7 me?

8 THE DEFENDANT: Yes. I just want to apologize to
9 the Court for having to deal with me today on account of a bad
10 choice I made. I was wrong. I should never have got involved
11 in this situation. I was used, but I'm not a drug dealer, your
12 Honor. This is something that I'm not. I know I've done many
13 things in my past, but I didn't -- I was used. I just want to
14 apologize. I'm sorry.

15 THE COURT: All right. Thank you very much.

16 Mr. Heinrich, do you see any reason why I should
17 not impose sentence at this time?

18 MR. HEINRICH: No, your Honor.

19 THE COURT: Mr. Underhill?

20 MR. UNDERHILL: No I don't, your Honor.

21 (Pause.)

22 THE COURT: Would you stand please, Mr. Howell?

23 I looked through the presentence report to see if
24 there was something -- some factor in it of redemption from the
25 career offender category. I understand that this may be a

1 close question about the nature of this offense, Mr. Underhill,
2 but there has been a plea to it, and the government satisfied
3 me at the time that if the case were to go to trial, the
4 government had a case that established the elements of this
5 offense.

6 I've always been one who has not been shy, as many
7 judges have, stating that our belief that the cocaine base
8 guidelines are severe, too severe. But as I look through this
9 record, Mr. Heinrich invited me to look through the record of
10 the non-predicate offenses for Mr. Howell to determine whether
11 there was something there that -- he's suggesting if I went
12 looking for a sentence outside the guideline, I look at the
13 non-predicate offenses to see how I should sentence outside the
14 guideline, and he, Mr. Heinrich, is correct that the
15 non-predicate offenses in some ways are more severe.

16 Mr. Howell started his criminal path at age 14, and
17 this record shows a number of firearms convictions, and there
18 is nothing, it seems to me, in this record that speaks to me of
19 a non-guideline sentence. And so the sentence I impose will be
20 a guideline sentence.

21 Mr. Howell, it's the judgment of the Court that you
22 be committed to the custody of the Bureau of Prisons to be
23 imprisoned for a term of 188 months. I will make a
24 recommendation that you participate in the 500-hour residential
25 drug abuse program.

1 Upon your release from imprisonment, you'll be
2 placed on supervised release for a term of five years.

3 Within 72 hours of release from the custody of the
4 Bureau of Prisons, you will report in person to the district in
5 which you are released.

6 While you are on supervised release, you will
7 comply with the following terms and conditions: You will not
8 commit another federal, state, or local crime; and you will not
9 possess an illegal controlled substance.

10 You will refrain from the unlawful use of a
11 controlled substance.

12 You will submit to one drug test within 15 days of
13 your release and at least two periodic drug tests thereafter,
14 not to exceed 104 tests a year.

15 You will submit to the collection of a DNA sample
16 as directed by the probation officer.

17 You will comply with the standard conditions as set
18 forth in the guidelines.

19 You are prohibited from possessing a firearm or
20 other destructive device or other dangerous weapon.

21 You are to meet with -- there's a child support
22 order -- there's an indication that you are in arrears of
23 \$26,000 in child support. You are to meet with the Department
24 of Revenue within the first 60 days of your supervision to
25 determine the amount of child support for which you are in

1 arrears and make arrangements to pay that child support.

2 You are prohibited in incurring new credit charges
3 or opening additional lines of credit without the approval of
4 the probation office while any financial obligation remains
5 outstanding.

6 You are not to consume any alcoholic beverages
7 while on supervised release, and you are to participate in a
8 program for substance abuse counselling as directed by the
9 probation office, that may include testing not to exceed 104
10 tests a year. And you are to participate, to the extent that
11 you can do so yourself or through third-party payment, in the
12 cost of that program.

13 You will pay the United States a special assessment
14 of \$100, due immediately.

15 I do not impose a fine on the ground that the
16 information available to me shows that you do not have the
17 capacity to pay a fine, particularly since I'm requiring a
18 workout of this child support arrangement. These will
19 obviously be back payments, because after this sentence, I
20 suppose there won't be immediate need for child support at this
21 time. How old is this child?

22 THE DEFENDANT: Nineteen.

23 THE COURT: Your child is now 19 years old?

24 So these are back payments.

25 All right. My order stands for these back

1 payments.

2 Are there any questions?

3 Let me advise you, Mr. Howell, that you can appeal
4 your conviction if you believe that your plea of guilty was not
5 knowingly or voluntarily made, if you think there was some
6 fundamental defect in these proceedings not waived by your
7 guilty plea. You may also appeal the sentence I've imposed on
8 you if you believe the sentence I've imposed is contrary to
9 law.

10 You begin the process of appealing by filing a
11 notice of appeal. But any notice of appeal that you wish to
12 file must be filed within ten days of judgment being entered in
13 your case.

14 If you want to appeal and you want to file a notice
15 of appeal but you cannot pay the fee for filing the notice of
16 appeal, you should let the clerk of this court know that and
17 the clerk of court will prepare and file a notice of appeal on
18 your behalf.

19 Is there anything further?

20 MR. UNDERHILL: No, your Honor.

21 MR. HEINRICH: No, your Honor.

22 THE COURT: We are adjourned. Thank you very much.

23 (Court adjourned at 3:05 p.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter to the best of my skill and ability.

/s/ Debra M. Joyce

Debra M. Joyce, RMR, CRR
Official Court Reporter

Date